

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 99-10023-04-JTM

ROBERT TURNER,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant Robert Turner's "MOTION To Request His NOTICE OF JUDGMENT With Specific Compliance to Petitioner's RESTITUTION PAYMENT AMOUNTS." (Dkt. 312). Turner and three other defendants were charged with various crimes in the Superseding Indictment, including a series of armed robberies in the area of Wichita, Kansas. Co-defendants J.D. McClenton, Cornelius Graham and Leo Graham pled guilty to various offenses in 2000, and the court entered separate judgments against each defendant. (Cornelius Graham (Dkt. 125), J.D. McClenton (Dkt. 126), Leo Graham (Dkt. 138)). In 2001, the case against defendant Turner was tried to a jury, which found him guilty of various offenses, including Counts 4 and 13 of the Superseding Indictment, charging the robberies of a Food-4-Less and a Furrs Cafeteria. In the separate Judgment entered against Turner, the court ordered: "The defendant shall

make restitution to the following payees in the amounts listed below," naming Food-4-Less (in the amount of \$516) and Furr's Family Dining (\$5,500). (Dkt. 181).

Turner states in the present motion that he "has diligently paid monies toward the restitution fine/amount," an amount "well over \$1,300," but that the Judgment fails to set forth "a total amount and not a breakdown amount that each defendant/co-defendant must pay." (Dkt. 312, at 2, 3). Accordingly, the defendant seeks "a Court ORDER and/or SPECIFIC COMPLIANCE that breaks down the total restitution due by each co-defendant and/or responsibility." (*Id.*) Turner states that "it is unfair for one defendant to pay for more than his/her share of the Court ORDERED determined amount of restitution." (*Id.*)

In 2014, the court considered and rejected a similar motion by co-defendant Leo Graham, which sought to limit his proportional responsibility for a total restitution amount of \$19,049.42, including the robberies of Furr's Family Dining and the Food-4-Less. (Dkt. 310). As Turner does in the present motion, Graham complained (Dkt. 310, at 1) that "to hold him accountable" for all the restitution was "unfair."

The court denied the motion. First, the court held that the individual judgments in the action reflected a determination that the individual defendants pay restitution to the robbery victims on a joint and several basis. The court further concluded that it was without jurisdiction to alter the judgment, by effectively transforming the restitution from a joint and several requirement to restitution on a proportional basis. (Dkt. 311).¹

¹ The court further notes the record fails to reflect that the movant has paid an unfair amount in restitution. The court imposed restitution for the Food-4-Less and Furrs robberies charged in Counts 4 and 13 only as to Turner and Cornelius Graham.

The present motion by the defendant offers no rationale for reaching a different conclusion.

IT IS ACCORDINGLY ORDERED this 16th day of February, 2016, that the defendant's Motion to Request Notice (Dkt. 312) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE

McClenton and Leo Graham were charged with restitution only as to the State Bank of Colwich robbery. Thus, even if Tuner has paid some \$1300 in restitution, this would still be substantially less than half of the \$6016 amount owed as restitution for the Food-4-Less and Furrs Cafeteria robberies.